"discovery," "profound" or otherwise. On the contrary I have expressly referred to the principle on which they are based as "a mere commonplace with students of finance,"[1] although one usually overlooked in discussions concerning the taxation of intangible property. Apparently Professor Meeker has quite as much difficulty in stating fairly the views of an opponent as he has in reporting correctly the number of persons in attendance at a convention.

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WASHINGTON NOTES

THE CORPORATION TAX CASES
A NEW COMMODITIES CLAUSE DECISION
CONGRESSIONAL TARIFF PLANS
BREAKDOWN OF BANK DEPOSIT GUARANTY SYSTEM
AN ANALYSIS OF MANUFACTURED EXPORTS

In a decision likely to rank with the income-tax cases of 1894 and the inheritance-tax cases that arose under the Spanish War revenue legislation, the Supreme Court of the United States has settled the controversies under the federal corporation-tax provision which formed a part of the Payne-Aldrich Tariff Law (Nos. 407–9, 412, 415, 420, 425, 431, 432, 442, 443, 446, 456, and 457, October term, 1910, handed down March 13, 1911). The opinion, as delivered by Justice Day, holds that the corporation-tax law must be sustained at practically every point claimed by the government. After reviewing and rejecting the argument that the tax provision originated in the Senate and was therefore unconstitutional, the court takes up the question whether the tax was really a levy upon the privilege of doing business and says that "while the mere declaration contained in a statute that it shall be regarded as a tax of particular character does not make it such . . . . nevertheless the declaration of the law-making power is entitled to much weight and . . . . it is therefore apparent . . . . that the tax is imposed . . . . upon the doing of corporate . . . . business. This interpretation of the act . . . . is sustained by the reasoning in *Spreckles Sugar Refining Company* v. *McClain*." The court then turns directly to the constitutionality of the law and holds that the act does not impose direct taxation upon property

[1] *Proceedings of Second Annual Conference on State and Local Taxation*, 133.

solely because of its ownership, but that the tax is within the class which Congress is authorized to lay and collect under article 1, section 8, clause 1 of the Constitution. Being an excise tax, the impost cannot be criticized because of the method of its apportionment. With regard to the claim that the tax is void because it seeks to tax the exclusive right of a state to grant corporate franchises, the court says that the limitation whereby the means and instrumentalities of the states are exempted from federal taxation "has never been extended to the exclusion of the activities of a merely private business from the federal taxing power although the power to exercise them is derived from an act of incorporation by one of the states. We, therefore, reach the conclusion that the mere fact that the business taxed is done in pursuance of authority granted by a state in the creation of private corporations does not exempt it from the exercise of federal authority to levy excise taxes upon such privileges." The fact that the tax, while striking corporations, does not apply to private competing businesses of similar character, is waved aside on the ground that the Constitution does not require such uniformity. Even more interesting is the view of the court as to the contention that some corporations have large investments in securities which are non-taxable, such as municipal bonds, etc. Of this the court says "this argument confuses the measure of the tax upon the privilege, with direct taxation of the estate or thing taxed. . . . . There is nothing in these cases contrary, as we shall have occasion to see, to the former rulings of this court which held that, where a tax is lawfully imposed upon the exercise of privileges within the taxing power of the state or nation, the measure of such tax may be the income from the property of the corporation, although a part of such income is derived from property in itself non-taxable. The distinction lies between the attempt to tax the property as such and to measure a legitimate tax upon the privileges involved in the use of such property." A number of other points of considerable interest are raised, although not all that were brought forward in the various briefs filed with the court are considered. Those just reviewed represent probably the most significant of the positions taken by the court.

In another important opinion the Supreme Court has given further interpretation to the "commodities clause" of the Inter-

state Commerce Act (No. 536, October term, 1910, handed down April 3, 1911). This opinion decides the case of *United States* v. *Lehigh Valley Railroad Company* and is a sequel to the issues disposed of in the so-called commodities clause cases previously dealt with. In the former cases the contention of the government was that the clause in question prohibited railroad companies from moving in the channels of interstate commerce articles or commodities other than the articles excepted by the provision, which had been manufactured, mined, or produced by the companies or under their authority, or which were at the time of the transportation owned by them in whole or in part, or in which the companies then or previously had any interest, direct or indirect. The government, moreover, insisted that these general propositions embraced the movement by the companies in interstate commerce of a commodity which had been manufactured, mined, or produced by a corporation in which the transporting railroad company was a stockholder, irrespective of the extent of such stock ownership. The railroad companies in effect defended the suits upon the ground that the statute as construed by the government was repugnant to the Constitution. Summing up its review as to the true construction of the commodities clause, the court held that it prohibited "a railroad company engaged in interstate commerce from transporting in such commerce articles or commodities under the following circumstances and conditions: (*a*) when the article or commodity has been manufactured, mined, or produced by a carrier or under its authority, and at the time of transportation the carrier has not in good faith, before the act of transportation, disassociated itself from such article or commodity; (*b*) when the carrier owns the article or commodity to be transported in whole or in part; (*c*) when the carrier at the time of transportation has an interest, direct or indirect, in a legal or equitable sense, in the article or commodity, not including, therefore, articles or commodities manufactured, mined, or produced or owned, etc., by a bona-fide corporation in which the railroad company is a stockholder." In this case the Supreme Court sends an appeal back to the lower court with orders to permit the filing of exceptions and an amended bill on behalf of the government, designed to show that the Lehigh Valley Railroad Company exerted over the Lehigh Valley Coal Company a control which was greater than would have been due to the mere fact that the railroad company owned

stock in the coal company. This is tantamount to a statement that railroad companies may not so use their stock ownership in coal companies as practically to defeat the ends of the commodities clause of the interstate commerce law, but must separate themselves from their coal holdings in actual fact as well as in theory. The Lehigh Valley Coal Company has apparently used its power to fix prices and control shipments of coal throughout the region served by it in such a way as to exert the same power as had previously been used by the railroad company. Recognizing this state of affairs, the court finally asserts that where a railroad practically owns the stock of a subsidiary company "the use of such stock ownership in substance for the purpose of destroying the entity of a producing, etc., corporation and of commingling its affairs in administration with the affairs of the railroad company, so as to make the two corporations virtually one, brings the railroad company so voluntarily acting as to such producing, etc., corporation within the prohibition of the commodities clause."

In opening the congressional session the Democratic party now in control of the lower House of Congress has taken action definitely blocking out a tariff program which is likely to be of large significance. This program includes the early reporting of the reciprocity bill recommended by President Taft, the passage of a bill carrying large additions to the free list, and the revision of the wool and woolens and cotton schedules. Thus far only two of these plans have taken official form. The reciprocity bill has been presented in the same shape in which it was passed by the House at the last session of Congress and was then reviewed in this Journal. Added to it, however, is a clause which was not then included, in which the President is requested to continue further negotiations with Canada looking to the extension of reciprocally freer trade relations. The second important phase of the program now made definite enlarges the free list by providing for the addition to it of plows, harrows, cultivators, and all other agricultural implements, including repair parts; bagging for cotton, gunny cloth, jute fabrics, burlaps, and every material suitable for sacking agricultural products; hoop or band iron and steel, cotton ties, wire for baling hay, and the like; grain and sole leather, belting leather, boots and shoes, saddlery, harness, and similar articles; barb wire, wire rods, fencing, etc.; beef, veal, mutton, lamb, pork,

and meats of all kinds; buckwheat flour, corn meal, wheat flour, and all prepared cereal foods; timber of all kinds, shingles, and other lumber except specially mentioned tropical woods; sewing machines, and salt in bulk or bags. This measure is intended to meet the charge that an unwarranted attack has been made upon the farmers by the adoption of the Canadian reciprocity treaty. The Democratic party will now be able to contend that at the same time that it has voted to admit agricultural products free from Canada it has likewise arranged that the farmer's fundamental necessities shall be admitted free from every part of the world. This argument is also to be used in reply to those who attack the party for planning a reduction of rates on wool.

Data lately obtained by the Comptroller of the Currency indicate the true reason for the movement of banks out of the Oklahoma state guaranty system and into the national system. There was a rush of national banks into the Oklahoma system some two years ago, soon after the Oklahoma bank deposit guaranty law had been adopted, but within the past six months more than an equal number have applied for readmission to the national system. The reason for this movement throws light upon the attitude of the public toward the bank guaranty question. It appears that depositors have been shifting their funds from state banks to national, so that it would be well worth while for a far-sighted banker to change his charter in order not to lose business. The conditions that have developed in Oklahoma are shown by the following statement for deposits in national banks:

Date	Number of Banks	Individual Deposits	Increase over Previous Year	
			Amount	Percentage
February 14, 1908 ..	312	$38,298,247	$	....
April 28, 1909.....	242	38,994,192	595,945	1.8
March 29, 1910.....	221	43,762,447	4,768,255	12.2
March 7, 1911	229	48,169,088	4,406,641	10.0

An important phase of this movement is also seen in the conditions which have developed in states bordering upon Oklahoma. In the eight counties of Arkansas bordering Oklahoma, there were on February 14, 1908, sixteen national banks reporting to the Comptroller $4,523,000 individual deposits. On April 28, 1909,

the deposits in these banks had increased only 7 2/10 per cent, while deposits in other national banks in the state aggregating $6,823,000 on the date first mentioned had increased 22½ per cent. On March 29, 1910, the figures showed an increase in deposits of only 4.7 per cent from April 29, 1909, in the national banks of these bordering counties, while the ratio was nearly double (or 9.1 per cent) in the other counties. In marked contrast to these ratios and indicating reversed conditions, the statistics show that the national banks in the border counties referred to increased their deposits between March 29, 1910, and March 7, 1911, by over 21 per cent, while the increase for the rest of the state was only 12½ per cent.

In Texas, as shown by reports of February 14, 1908, there were 67 national banks with aggregate deposits of $15,080,000, operating in the 20 counties along the southern and western boundary of Oklahoma, while there were 460 national banks with over $102,250,000 of individual deposits elsewhere in the state. On April 28, 1909, the ratio of increase in deposits in the border counties was only 0.8 per cent, the increase in the other counties being 3.2 per cent. At the end of the second period, March 29, 1910, the ratio of increase in the border counties of Texas has exceeded that in the other counties by 4.1 percent, the percentage of gain being 14.6 per cent to 10.5 per cent respectively.

In Kansas on February 14, 1908, there were 34 national banks making reports to the Comptroller in 14 counties adjacent to Oklahoma, the individual deposits in these banks aggregating $8,319,000. For the rest of the state 170 national banks reported deposits aggregating $50,517,000. On April 28, 1909, national banks in the border counties gained in deposits 10.7 per cent, while those located in the other sections of the state gained 15.4 per cent. Opposite conditions prevailed at the end of the next period ending March 29, 1910: border county national banks gained 10.6 per cent, while the ratio for those in the other counties fell to 6.4 per cent. At the end of the third period the deposits in the national banks of Kansas show a decrease. Comparing the border counties with the rest of the state, however, the ratio of decrease was found to be less for the border county banks than for those in the other counties, being 7.1 per cent against 7.6 per cent.

The decrease in deposits in Kansas national banks is probably due to the fact that depositors were attracted by the inducement

of the new guaranty law of that state, but the evidence appears conclusive that the bank-deposit guaranty system is practically a failure in the eyes of the public where it has been given definite trial. There is a chance that the guaranty system of some of the western states will be better managed or will meet with more fortunate conditions than has that of Oklahoma, but the experience in the latter state seems to be symptomatic of what may ultimately be looked for elsewhere.

Director E. D. Durand of the Census Bureau has made a thorough report upon the government's statistics of manufactured exports. This report has been handed to the Secretary of Commerce and Labor in manuscript form and has not been published. It constitutes one of the most complete analyses of present conditions governing the compilation of export statistics that has been prepared. The investigation originated in the fact that certain charges against the Bureau were given wide publicity at the time of the Pan-American Congress in February. New York importers had been supplied with affidavits by former employees of the Bureau to the effect that the statistics of manufactures were willfully padded. Dr. Durand's report completely acquits the Bureau of any such acts as were charged by the importers and the ex-employees. Its principal value, however, is found in the study of the classifications now employed by the Bureau of Statistics, which are on the whole approved, and in the analysis it makes of the actual trend in the figures for manufactured exports. These figures are considered in comparison with those of England, Germany, and other countries, and the conclusion is arrived at that the reported exports of manufactured articles from the United States have shown no improbable increase within the past four or five years. It is believed that there is nothing in the increase in recent years which is inconsistent with the known facts regarding the general conditions of trade in this country. The movement is parallel with that of exports from Great Britain and Germany while the relationship between foreign exchange and the statistics of imports and exports shows an entirely normal condition. The figures show, on the whole, a rather close parallelism during the past ten years between the exports of manufactured articles from the United States and the total exports of Great Britain and Germany. The exports of manufactured articles from the United

States and of all articles from Great Britain and Germany were much less in 1908 and 1909 than in 1907. The year 1910 was a great export year for all three countries. Exports of manufactures from the United States in 1910 exceeded those for 1907 by 8 per cent; Germany's total exports meantime increased 9 per cent and Great Britain's 1 per cent. Dr. Durand also finds that the new census statistics for manufactures in 25 states show that the increase in production of manufactures corresponds quite closely to the increase in exports. While there was a very large increase in exports during 1910 as compared with 1908 and 1909, there was also a very large increase of imports, and the balance of trade in our favor (excess of exports over imports) for the calendar year 1910 was less than for any other year since 1895, with the single exception of 1909. There was no great difference between 1910 and 1909 in this respect, the excess of exports over imports being $302,000,000 in 1910 and $253,000,000 in 1909. In every year from 1898 to 1908 the excess of exports was more than $390,000,000. A consideration of the monthly movements of balances of trade in comparison with the monthly movement of sterling exchange throughout the past two or three years shows also nothing unreasonable in the present situation as respects exchange and the balance of trade.